

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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LIBERTY MUTUAL INSURANCE COMPANY  
and LIBERTY MUTUAL GROUP INC.,

Plaintiffs,

v.

RICHARD P. LUND and MARY E. LUND,

Defendants.

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ORDER

19-cv-280-jdp

Plaintiffs are suing two defendants for failing to return an insurance overpayment. Plaintiffs have moved for default judgment against defendant Mary Lund because Lund did not answer or otherwise respond to the second amended complaint. *See* Dkt. 48. Defendant Richard Lund asks the court to grant his motion to dismiss as unopposed because plaintiffs never responded to it. *See* Dkt. 47.

In response to plaintiffs' motion for entry of default, Mary Lund says that she attempted to file a notice asking the court to consider her motion to dismiss the first amended complaint as her motion to dismiss the second amended complaint, but her attempt failed and she did not realize that her request was never docketed. *See* Dkt. 52. In response to Richard Lund's request to grant his motion to dismiss as unopposed, plaintiffs ask the court to consider their brief in opposition to Richard Lund's previous motion to dismiss as plaintiffs' brief in opposition to the new motion to dismiss. *See* Dkt. 51.

Mary Lund doesn't explain why she never checked the docket to ensure that her notice had been filed correctly. And plaintiffs don't explain why they failed to respond to Richard Lund's motion to dismiss. Both sides have been negligent and neither side identifies any prejudice it has suffered. So the motion for entry of default, Dkt. 48, is DENIED. The court

will consider Dkt. 36 as Mary Lund's motion to dismiss the second amended complaint and Dkt. 34 as plaintiffs' opposition brief to Richard Lund's motion to dismiss the second amended complaint. Plaintiffs may have until May 5, 2020, to either file a new opposition brief to Mary Lund's motion to dismiss or inform the court that they will rely on their previous opposition brief; defendant Mary Lund may have until May 12 to file a reply brief or inform the court that she will rely on her earlier reply brief. Defendant Richard Lund may have until May 1, 2020, to file a reply brief in support of his motion to dismiss or inform the court that he will rely on his previous reply brief.

Counsel for all parties should attend more carefully to the docket and to the Notices of Electronic Filing that every docket entry generates.

Entered April 22, 2020.

BY THE COURT:

/s/

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JAMES D. PETERSON  
District Judge